

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

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| KIM BACON, et al. |) | |
| Appellant |) | OSPI 56-83 |
| vs . |) | |
| |) | FINDINGS OF FACT, |
| BEAVERHEAD COUNTY TRANS- |) | CONCLUSIONS OF LAW & ORDER |
| PORTATION COMMITTEE, |) | |
| Respondent. |) | |

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This matter arose from a decision of the Beaverhead County Transportation Board dated August 19, 1983 which was appealed on September 7, 1983, to this office. The matter being deemed submitted for decision and after careful consideration of the transcript, exhibits and arguments presented by the parties, I now make these:

FINDINGS OF FACT

1. The Appellants clearly established before the county superintendent and other members of the transportation committee that the roads over which they were seeking isolation rate reimbursement are subject to severe weather conditions in an area of the state which historically is subjected to the most severe weather extremes during the winter months.

2. The parties appealing the decision of the Beaverhead County Transportation Board clearly established on the record additional evidence regarding the impassable condition of the road in question during the springtime.

3. The County Transportation Committee presented no witnesses or evidence to controvert the clear and convincing testimony and other evidence submitted as to the impassable condition of the roads in question during the year.

4. Appellants were seeking isolation rates for individual transportation pursuant to Section 20-10-142. Appellants were not seeking to change the route or disputing the distance as traveled for reimbursement.

5. Appellants were granted isolated rates for the 1983-84 school year by Wisdom School Dist. No. 16, and there is evidence in the record to indicate that for some previous years that rate had been approved.

6. The Beaverhead County Transportation Committee on June 28, 1983 denied the request for isolation rates for Appellants Donald Kirkpatrick, Kim Bacon, Perry Peterson, and Harry Humbert.

7. Pursuant to a request for hearing, the Beaverhead County Transportation Committee held a hearing on August 4, 1983. It is assumed that during that time of the year the transportation committee reviewed the route involved.

8. Testimony was presented at the hearing that special equipment was required to transport students along the lower North Fork Road to school during extreme weather conditions from late fall through spring.

9. The difference in isolation rates is an additional \$1,821.60, a portion of which would be paid by the State of Montana.

10. There was evidence presented and I take administrative notice of the fact that winters in the Big Hole are bad and are some of the most extreme experienced in all of Montana and that the following springs yield much additional hardship because of melting snow.

11. While guidelines issued by prior superintendents indicate that graveling of roads and improvements are to be considered, it is doubtful that improvements in place would significantly change the condition of these roads during the extreme winters experienced in this area.

12. The County officials made every reasonable effort to keep the roads open, and Appellants here did not blame the county road crews for the conditions which they regularly encounter during the long harsh winters in this area of Montana.

13. Evidence was submitted that both absences and lateness were usual results of the difficulties encountered while traveling over the roadways to school during these severe and extreme conditions.

From the foregoing Findings of Fact, the following Conclusions of Law are drawn:

CONCLUSIONS OF LAW

1. That the State superintendent has jurisdiction to consider this appeal pursuant to 20-3-107, MCA and 10.6.125 Uniform Rules of School Controversies, Administrative Rules of Montana.

2. That the Appellants seek the isolated rate for reimbursement of transportation costs pursuant to 20-10-142, MCA.

3. That Section 20-10-106, MCA is not applicable to this appeal and the reliance placed by the Beaverhead County Transportation Committee was an error of law.

4. That isolation must be determined on a case-by-case basis by the transportation committee. Guidelines such as grading and graveling or inspections during the summer months should not override significant and uncontroverted testimony as to the special conditions and impassable roads encountered by these parents during the school year.

5. That there is uncontroverted, clear and convincing evidence that the criteria of 20-10-142(3) has been met and the Appellants herein are eligible for isolation rates.

6. That in view of the evidence of awarding of isolation rates in prior years to people in this area who had to travel these same roads, there was evidence to reverse that determination absent a change of circumstances of the roads during the winter months.

7. That there is no basis to conclude that the isolated condition which exists in this county or this area of the county is due in any part to any negligence or oversight of the county road crews involved.

8. That based upon the findings and conclusions herein the decision of the Beaverhead County Transportation Committee should be reversed and the contract for isolated rates awarded for the 1983-84 school year to Appellants.

From the foregoing Findings of Fact and Conclusions of Law, the State Superintendent now enters his order in this matter.

ORDER

The decision of the Beaverhead County Transportation Committee is reversed. The Appellants are to have their reimbursement rates increased to isolation status for the 1983-84 school year.

Dated this _____ day of April, 1984.